IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP. No. 223/2004

Judgment delivered on: November 23 ,2007

National Insurance Co.Ltd. ..... Appellant.

Through: Mr. L.K.Tyagi, Advocate.

versus

Smt. Pamila Devi & Ors. ..... Respondents

Through: Mr. O.P.Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

The present appeal is preferred against the award of

the Motor Accident Claims Tribunal dated 21.2.2004.

The factual scenario in the nutshell are as follows:-

On 10.12.97, deceased Sh.Ashok Kumar was going to his house after closing his shop at Peeragarhi on his two-wheeler scooter bearing registration No. DL 2S F 9578 along with his elder brother Mr.Pradeep Kumar as pillion rider. At about 7.45 a.m. when they reached Rohtak Road, Opposite Transport Centre, Near Petrol Pump, a blue line bus bearing registration No. DL 1P 2917, driven in a rash and negligent manner by Shri Satish Kumar hit the aforesaid two wheeler scooter from behind and as a result, both of them fell down and Sh. Ashok Kumar died on the accident spot while Sh. Pradeep Kumar received injuries on his legs besides multiple abrasions. Two claim petitions were filed on 3.2.98 and were disposed of by way of a common award dated 21.2.2004. Aggrieved with the said award, present appeal has been preferred by the appellant insurance company.

By way of this appeal, the appellant has assailed the

finding of the Tribunal, primarily on the ground that the Tribunal has wrongly taken into consideration the gross profit of the firm for arriving at the income of the deceased who was one of the partners in M/s.Deepak Iron Store. The contention of the counsel for the appellant, Mr.L.K. Tyagi, is that it is only the net profit of the partner which should have been taken into consideration for calculating the dependency and not the gross profit.

Per contra Mr. O.P. Gupta, counsel for the respondent contends that there is no illegality in the impugned award and the Tribunal has rightly taken into consideration the share of the deceased partner for determining the loss of dependency. Counsel for the respondent contends that the gross profit earned by a partner in itself is an income as from the gross profit he makes expenditure under many sundry heads including petrol and other basic facilities.

I have heard the counsel for the parties and perused the record. The deceased Ashok Kumar was a partner in M/s.

Deepak Iron Store and as per the balance sheet placed on record, he was earning a gross profit of Rs.3,22,728/- from the said firm. The deceased Mr. Ashok Kumar during the relevant period has drawn a sum of Rs.28,450/- out of the gross profit of the firm and he was also having monthly remuneration of Rs.900/- . Since the balance sheet placed on record does not give a clear picture of the exact earnings of the deceased partner, therefore, it would be appropriate to take the minimum wages as were applicable on the relevant date of the accident for determining the loss of income of the dependents.

The accident in the present case had occurred on 10.12.97 and on the said date the minimum wages for a matriculate person were Rs.2232/-. The deceased was 35 years of age on the date of the accident and therefore the appropriate multiplier as laid down in the Second Schedule is 16. The minimum wages as fixed under the Minimum Wages Act are increased twice in a year by the Government. After taking into consideration the rise in the price index and inflation as well

as other economic factors, the Tribunal has observed that in a period of 10 years minimum wages get increased to almost double of the amount. Since the multiplier of 16 is being applied in the present case, therefore, the said average income of minimum wages for the year 1997 shall be doubled to Rs.4464/- and taking the average of the same, the income would come to Rs.3,348/- per month. Applying the multiplier of 16 and making 1/3rd deductions towards personal expenses, loss of income towards dependency of the family would come to Rs.4,28,544/- The Tribunal has granted a sum of Rs.9,52,000/- towards loss of dependency. The same is modified to Rs.4.28,544/- . Besides the said amount the Tribunal has awarded a sum of Rs.30,000/- towards general damages comprising of funeral expenses, loss of consortium and loss of love and affection etc. The said amount of compensation towards general damages is already on the higher side and therefore, the same is not being interfered with.

In the light of the above discussion, the respondent

now shall be entitled to total amount of Rs.4,58,544/-. Counsel for the appellant states that in compliance of the direction of this Court, 50% of the award amount has already been released in favour of the respondents/claimants and since the balance amount was under stay, therefore, with the above modification the remaining amount shall now be paid by the appellant to the respondents/claimants with up-to-date interest @6% per annum only on the differential amount.

At the oral request of counsel for the appellant, let an amount of Rs.25,000/- which was deposited by the appellant towards statutory deposit, be released in favour of the appellant. With these directions, appeal stands disposed of.

November 23, 2007 **KAILASH GAMBHIR, J**

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